

Approved April 8, 1987
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on April 1, 1987 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Myrta Anderson, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee: Margaret Gatewood, The Ruedlinger Companies
Ron Todd, Kansas Insurance Department

The minutes of March 31 were approved.

The committee began discussion of bills previously heard. The first to be discussed was HB 2129 regarding risk retention in purchasing groups. The chairman told the committee that he had had correspondence from both sides, and most of it centers around New Section 8, a conformity section. He had checked with the Insurance Department, and they have no problem with adopting the exact federal language. An amendment on page 12, lines 417 and 418, would strike "any or all the exposures of the risk insured through" and would change "are" to "is" at the end of line 418. This will make it the exact federal language. Sen. Harder made a motion to strike the language as suggested and to change "are" to "is", Sen. Karr seconded, and the motion carried.

Margaret Gatewood, The Ruedlinger Companies, stood to express her concerns about New Section 6. She conceded that it is part of the NAIC model bill, but it purports to paraphrase the federal language which she feels is a dangerous thing to do because it leads to different interpretations. She reminded the committee that New Section 6 and the federal language is on page 7 of her written testimony given at the hearing on the bill. She feels that it is an incorrect presumption that the New Section 6 is all that the federal law says, and this will cause a lot of litigation. Therefore, she requested that New Section 6 be stricken, leaving reliance on federal law.

Ron Todd, Kansas Insurance Department, said that if the approach were taken of not paraphrasing any federal language, there would be no need for a bill. He does not see anything in New Section 6 that would be a problem to anyone. Sen. Karr asked if a reference to federal law could be put in New Section 6. Mr. Todd said this is not necessary because referral to federal law is really already there because the state has to comply with federal law. With regard to Section 7, Sen. Karr mentioned the concern of Mrs. Gatewood regarding the mention of purchasing groups here. Mr. Todd said it is a reproduction of federal law as is Section 8. The reproduction of federal language is not word for word, but the main idea is there.

The chairman said he has no problem with New Section 6 because there is a referende to the federal liability risk retention act of 1986 in it. Mrs. Gatewood said she would have no objection to Section 6 if the last sentence is stricken because it seems redundant. The chairman reiterated that he has no problem of leaving it as it is.

Sen. Harder made a motion to recommend HB 2129 favorable for passage as amended, Sen. Burke seconded, and the motion carried.

Attention was turned to HB 2407, a conformity bill of the Credit Union Commissioner. The chairman reminded the committee of the testimony in opposition in that it gave the Commissioner unusual powers. He has letters from several credit unions on it, and they are almost evenly split for and against it. He reported the response from credit unions who had not testified at the hearing. He then informed the committee that staff had prepared the requested balloon indicating the differences in regulatory authority of the bank, savings and loan, and credit union commissioners. (See Attachment I.) He also informed the committee that Post Audit would wait until after today for a decision as to if a performance audit should be done. Staff explained the major points of the Credit Union Commissioner's request as he went through the balloon.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,

room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on April 1, 1987

The chairman called attention to a suggested amendment by Jim Holt of the Kansas Credit Union League which had been passed out earlier. It regards subpoena powers, page 8 of the bill. Mr. Holt thought this would take care of some of the concerns expressed by the opponents at the hearing. Sen. Werts asked if the other commissioners have access to subpoena powers, and staff said they do. Staff looked at the language of the proposed amendment and said that he is unsure of the final sentence. It is questionable as to what it attempts to do and is not the normal part of a section like this. It could be not compatible with any other agency reviews. If the last sentence is stricken, it would make it subject to judicial review and civil enforcement act. Sen. Harder made a motion to adopt the amendment by Mr. Holt absent the last sentence, Sen. Karr seconded, and the motion carried.

The chairman noted that the other provision that was a bone of contention was the authority given the commissioner as to what type of software is used (page 3). He had a letter from a credit union as to why that was alright for the commissioner to have that authority. Staff reminded the committee that this language was removed by the House. Sen. Strick said he sees no reason to give this authority to this commissioner because the others don't have this authority.

Sen. Werts expressed concern about "clear and convincing evidence" used in the bill because it could cause problems, therefore, he made a motion to strike "from clear and convincing evidence" on lines 71 and 267, Sen. Reilly seconded, and the motion carried.

Sen. Strick asked if this bill would give this commissioner more authority than the bank and savings and loan commissioners, and the chairman said it would not.

Sen. Gordon made a motion to recommend HB 2407 favorable as amended, Sen. Reilly seconded, and the motion carried.

The committee began consideration of HB 2147, the no-fault insurance revision bill. The chairman said there were two concerns about this proposal: (1) the amount of the threshold and (2) the fractures language. With regard to fractures language, the chairman said he had reviewed the theory of deleting the language on page 14, and it does not prevent anyone from suing on a permanent injury. Sen. Werts made a motion to strike the House floor amendment language on page 14, lines 510 and 511, Sen. Burke seconded. Sen. Gannon asked if this motion carries, will the committee change the threshold and, if so, which way. The chairman said that there would be a good possibility that the threshold would be changed and that he assumed it would be raised. A short discussion followed, and on a call for a vote of Sen. Werts' motion, the motion carried.

Sen. Reilly chose to address the threshold. He said \$500 is way too low based on today's inflation. He referred to a letter from State Farm Insurance with information that a study they made indicates that if the threshold is placed at \$2250 without the language just removed, there will be a neutral revenue affect on the rates. He feels the committee has an obligation to the people of Kansas not to raise the rates; and that they need the benefits. Sen. Reilly made a motion to raise the threshold to \$2250, Sen. Kerr seconded.

The chairman said that Mr. Mason of the Kansas Trial Lawyers had told him that the increase figures out to \$2.20 per policy which is where the 8 or 9 million dollar increase figure comes from as given in testimony.

Sen. Gannon began a discussion as to rates of auto liability being reported as having gone down and as to the need for a no-fault bill in this case. He feels that there is a need to keep a balance, but he is confident that a balance is not being kept. Sen. Kerr related that his insurance rates have risen, and he feels this bill is needed to maintain stability. Sen. Gannon stated his opposition to the motion to go to \$2250 and made a substitute motion to lower the threshold to \$1500, Sen. Karr seconded, and the motion failed.

Upon a call for a vote on the primary motion, the motion carried.

Sen. Werts made a motion to recommend HB 2147 favorable as amended, Sen. Kerr seconded, and the motion carried.

The chairman said there would be one more committee meeting to hear a Ways and Means bill dealing with retail finance rates.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

| DATE | NAME | ADDRESS | REPRESENTING |
|--------|---------------------|------------|-------------------------------|
| 4-1-87 | Lee Wright | MISSION KS | Farmers Ins Group |
| | Jim McBride | Topeka | observer |
| | Lucie Fortman | Topeka | Ks Bar Association |
| 4-1-87 | Joseph A. Spear | Wichita | Cassara Credit Union |
| 4-1-87 | Carol Wright | Topeka | Ks Credit Union League |
| 4-1-87 | Annie Moriarty | Topeka | KS Trial Lawyers |
| 4/1/87 | Lori Callahan | Topeka | am. ins. assn. |
| 4/1/87 | William L. Mitchell | Hutchinson | Alliance Ins |
| 4/1/87 | Jim Oliver | Topeka | Prof Ins Agts of Ks |
| 4/1/87 | Henn Cogswell | Topeka | Alliance of American Insurers |
| 4/1/87 | Margaret Alcatraz | Topeka | The Reedling Co's |
| " | Delmar Mesa | " | KTLA |
| " | Dick Brock | Topeka | Ins Dept |
| ✓ | Bob Arkuthis | ✓ | KTLA |
| " | Ron Todd | " | INS. Dept. |
| " | LARRY MAGILL | " | I.I.A.K. |

As Amended by House Committee

Session of 1987

HOUSE BILL No. 2407

By Committee on Commercial and Financial Institutions

2-17

0018 AN ACT relating to credit unions; concerning certain powers
0019 and duties of the administrator; amending K.S.A. 17-2242 and
0020 17-2249 and K.S.A. 1986 Supp. 17-2206, 17-2226 and 17-2230
0021 and repealing the existing sections.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 1986 Supp. 17-2206 is hereby amended to
0024 read as follows: 17-2206. (a) Credit unions shall be subject to the
0025 exclusive supervision of the administrator and shall make a
0026 report of condition to the administrator at least semiannually, on
0027 blank forms to be supplied by the administrator, notice of which
0028 reports shall be sent out by the administrator. Returns shall be
0029 verified under oath of the president or chairperson of the board,
0030 whichever has been elected by the board of directors pursuant to
0031 K.S.A. 17-2209, and ~~any~~ amendments thereto, and treasurer, and
0032 additional reports may be required by the administrator. Copies
0033 of a current balance sheet shall be furnished without charge by
0034 the administrator to any person upon request. Any credit union
0035 which neglects to make the above reports shall forfeit to the
0036 treasurer of the state up to \$50 for each day of such neglect at the
0037 discretion of the administrator.

0038 (b) Each credit union shall be examined at least ~~annually~~
0039 once every 18 months by the administrator or the administrator's
0040 duly authorized deputy or agent. In lieu of any particular ~~annual~~
0041 examination, the administrator may accept an examination report
0042 made by or under the authority of the national credit union
0043 administration or its successor or successors, by any such other
0044 appropriate federal agency or by an independent auditor or
0045 certified public accountant licensed to do business in the state of
0046 Kansas if such audit and report meet ~~with~~ the standards which

*inserted new
both bank &
CFL*

Attachment I
Senate F I & I - 4/1/87

Banks

S+L's

0047 the administrator may by regulation promulgate. The adminis-
 0048 trator may order other examinations, and the administrator's
 0049 agents shall at all times be given free access to all books, papers,
 0050 securities and other sources of information in respect to the
 0051 credit union. For that purpose the administrator's agents shall
 0052 have the power to subpoena and examine personally witnesses
 0053 on oath and documents pertaining to the business of the credit
 0054 union. If a credit union neglects to make the required reports or
 0055 to pay the charges herein required, including charges for delay
 0056 in filing reports, for 15 days, the administrator shall notify the
 0057 credit union of the administrator's intention to revoke the certif-
 0058 icate of approval. If the neglect or failure continues for another
 0059 15 days, the administrator may revoke the certificate of approval
 0060 and shall cause one of the administrator's agents to take posses-
 0061 sion of the business of such credit union and retain possession
 0062 until such time as the administrator may permit such credit
 0063 union to resume business or its affairs are finally liquidated.

0064 (c) ~~If it appears to the administrator that a credit union has~~
 0065 ~~violated or is violating any of the provisions of law, the adminis-~~
 0066 ~~trator, by an order made over the administrator's official signa-~~
 0067 ~~ture, after a hearing or an opportunity for a hearing has been~~
 0068 ~~given the credit union, may direct such credit union to discon-~~
 0069 ~~tinue its illegal methods and practices. The administrator may~~
 0070 ~~issue cease and desist orders made over the administrator's~~
 0071 ~~official signature, having determined from clear and convincing~~
 0072 ~~evidence that a credit union is engaged, has engaged, or is about~~
 0073 ~~to engage, in an unsafe or unsound practice, or is violating, has~~
 0074 ~~violated, or is about to violate, a material provision of any law,~~
 0075 ~~rules and regulations or any condition imposed in writing by the~~
 0076 ~~administrator or any written agreement made with the admin-~~
 0077 ~~istrator. A credit union may appeal such order pursuant to~~
 0078 ~~K.S.A. 17-2241, and amendments thereto.~~

0079 (d) If a credit union is insolvent, or has, within a reasonable
 0080 time, has failed to comply with any order mailed to the last
 0081 address filed by the credit union with the administrator, the
 0082 administrator shall immediately, or within a reasonable time
 0083 thereafter, take possession of or appoint an agent to take posses-

**9-1807. Cease and desist orders; insti-
 tution of proceedings by commissioner;
 hearing by board; issuance; temporary
 orders of commissioner.** If the state bank
 commissioner shall determine that any bank
 or trust company is engaging or has en-
 gaged, or the commissioner has reasonable
 cause to believe that the bank or trust com-

. . . .

Unless the bank or trust company shall
 appear at the hearing by a duly authorized
 representative, it shall be deemed to have
 consented to the issuance of the cease and
 desist order. In the event of such consent, or
 if upon the record made at any such hearing,
 the board shall find that any unsafe or un-
 sound practice or violation specified in the
 notice of charges has been established, the
 board may issue and serve upon the bank or
 trust company an order to cease and desist
 from any such practice or violation. Such
 order may, by provisions which may be
 mandatory or otherwise, require the bank or
 trust company and its directors, officers,
 employees and agents to cease and desist
 from the same, and, further, to take affirma-
 tive action to correct the conditions resulting
 from any such practice or violation. A cease
 and desist order shall become effective at
 the time specified therein, and shall remain
 effective and enforceable as provided
 therein, except to such extent as it is stayed,
 modified, terminated or set aside by action
 of the board.

Whenever the commissioner shall deter-
 mine that the unsafe or unsound practice or
 practices or the violation or violations spec-
 ified in the notice of charges served upon
 the bank or trust company, or the continua-
 tion thereof, is likely to cause insolvency or
 substantial dissipation of assets or earnings
 of the bank or trust company, or is likely to

. . . .

Such order shall be effective upon
 service thereof upon the bank or trust com-
 pany, and shall remain effective and en-
 forceable pending the completion of the
 proceedings pursuant to such notice and

**17-5613. Commissioner shall order as-
 sociation to discontinue any unsafe or ille-
 gal practice.** If the commissioner as a result
 of any examination or from any report made
 to him shall find any association is violating
 the provisions of its certificate of incorpora-
 tion or bylaws, or the laws of this state, or of
 the United States, or any lawful order of the
 commissioner, or is conducting its business
 in an unsafe manner, he shall, by an order,
 direct discontinuance of such violation or
 unsafe practice, and conformance with all
 requirements of law.

History: L. 1943, ch. 133, § 166; July 1.

**17-5614. Commissioner may appoint
 trustee in certain cases.** If an association
 shall refuse or neglect to comply with such
 order within the time specified therein, or if
 it shall appear to the commissioner that any
 association is in an unsafe condition or is
 conducting its business in an unsafe man-
 ner, or if he shall find that an impairment of
 capital exists to such an extent that it
 threatens loss to the members, or if any
 association refuses to submit its books,
 papers, and accounts to the inspection of the
 commissioner or his representative, the
 commissioner may appoint a trustee to take
 charge of the association and manage its
 business until the commissioner shall per-
 mit the board of directors to resume man-
 agement of the business or shall reorganize
 the association, or until a receiver shall be

0084 sion of the business and property of the credit union and retain
0085 possession until such time as the administrator may permit it to
0086 resume business or its affairs are finally liquidated.

0087 (e) Each credit union shall pay to the administrator a fee for
0088 examination, established in accordance with this subsection.
0089 Prior to June 1, of each year, the administrator, with the approval
0090 of the credit union council, shall establish such annual fees as
0091 the administrator determines to be sufficient to meet the budget
0092 requirements of the department of credit unions for the fiscal
0093 year beginning July 1. Such fees shall be due and payable 30
0094 days after receipt of billing from the department of credit unions.

0095 (f) For a central credit union located in the state of Kansas
0096 and under the supervision of the administrator, in which all
0097 credit unions in the state of Kansas are eligible for membership,
0098 the administrator may accept an audit report by a certified public
0099 accountant in lieu of the credit union departmental examination
0100 of such credit union. If the administrator accepts a certified
0101 public accountant audit in lieu of the administrator's examina-
0102 tion of such a central credit union, the administrator may assess
0103 such central credit union a fee established in accordance with
0104 subsection (e).

0105 (g) *No credit union may purchase, rent, lease or otherwise
0106 obtain or contract for data processing service or equipment
0107 until the person or business offering such service or equipment
0108 has furnished certification that such service or equipment can
0109 produce the minimum accounts and reports required by the
0110 administrator. The administrator shall furnish a listing of these
0111 minimum accounts and reports to any person or business upon
0112 request.*

0113 Sec. 2. K.S.A. 1986 Supp. 17-2226 is hereby amended to read
0114 as follows: 17-2226. (a) Credit unions may purchase, lease, hold
0115 or rent real estate and improvements thereon for their current or
0116 future use and occupancy. Without the *written* approval of the
0117 administrator, such expenditure shall not exceed 5% of the first
0118 \$1,000,000 of the total shareholdings plus 3% of the total share-
0119 holdings in excess of \$1,000,000, plus such additional sums as
0120 have been set aside for such purpose.

Attachment I
Senate F I & I - 4/1/87

0121 (b) A credit union may purchase, rent, hold, contract for,
0122 acquire or lease any material, equipment or service which may
0123 be necessary or incidental to its operation. The aggregate of all
0124 such purchases, rentals, holdings, contracts, acquisitions or
0125 leases when required by generally accepted accounting princi-
0126 ples to be entered as an asset or a liability shall not exceed 3% of
0127 the credit union's shares, reserves and undivided earnings
0128 without the written approval of the administrator.

0129 (c) A credit union may rent or lease a portion of its building,
0130 fixed assets or property and may acquire, lease, hold, assign,
0131 pledge, sell or otherwise dispose of property or other assets,
0132 either in whole or in part, necessary or incidental to its opera-
0133 tions and purposes.

0134 Sec. 3. K.S.A. 1986 Supp. 17-2230 is hereby amended to read
0135 as follows: 17-2230. (a) *Voluntary*. At a meeting especially called
0136 to consider the matter, a majority of the entire membership may
0137 vote to dissolve the credit union, provided a copy of the notice
0138 was mailed to the administrator at least 10 days prior thereto.
0139 Any member not present at such meeting may, within the next 20
0140 days, vote in favor of dissolution by signing a statement in form
0141 approved by the administrator and such vote shall have the same
0142 force and effect as if cast at such meeting. The credit union shall
0143 thereupon immediately cease to do business except for the
0144 purposes of liquidation, and the executive officer of the board
0145 and secretary of the board shall, within five days following such
0146 meeting, notify the administrator of intention to liquidate and
0147 shall include a list of the names of the directors and officers of
0148 the credit union together with their addresses. Any credit union
0149 which has voted to enter into voluntary dissolution may by action
0150 of its board of directors make a written application to the admin-
0151 istrator for the appointment of a receiver and the administrator
0152 shall then exercise such powers of appointment, control and
0153 supervision of a receiver as is provided where a credit union is
0154 insolvent.

0155 (b) *Involuntary*. If it shall appear that any credit union is
0156 bankrupt or insolvent, or that it has violated any of the provisions
0157 of this act, the administrator may, ~~after holding a hearing or~~

0158 ~~giving adequate opportunity for a hearing,~~ order such credit
0159 union to correct such condition and shall grant it a reasonable
0160 time under the circumstances of the case within which to
0161 comply, and failure to do so shall afford grounds for revocation of
0162 the corporate charter. *A credit union may appeal such order*
0163 *pursuant to K.S.A. 17-2241, and amendments thereto.* When the
0164 administrator finds that a credit union is insolvent, the adminis-
0165 trator shall appoint a receiver ~~therefor,~~ and require the receiver
0166 to give such bond as the administrator deems proper. The ad-
0167 ministrator also shall fix reasonable compensation for the re-
0168 ceiver but the same shall be subject to approval of the district
0169 court of the county wherein such credit union is located upon
0170 application of any party in interest. The administrator may ap-
0171 point as receiver any person, the Kansas credit union league, or
0172 the insurer or guarantee corporation required under K.S.A. 17-
0173 2246, and amendments thereto, for the credit union involved.
0174 Such receiver shall follow the liquidation procedure set out
0175 herein. Any receiver appointed shall make a complete report to
0176 the administrator covering the acts and proceedings as such
0177 receiver. The administrator may remove for cause any receiver
0178 and appoint a successor. The receiver, under the direction of the
0179 administrator, shall take charge of any insolvent credit union and
0180 all of its assets and property and liquidate the affairs and busi-
0181 ness for the benefit of its creditors and shareholders as provided
0182 in this section. The receiver may sell or compound all bad and
0183 doubtful debts and sell all the property of any such credit union
0184 upon such terms as the administrator shall approve. The admin-
0185 istrator shall have the general supervision of all the acts of the
0186 receiver. All claims of creditors and shareholders must be filed
0187 with the receiver within one year after the date of the receiver's
0188 appointment, and if any shareholder claim or creditor claim is
0189 not so filed then it shall be barred from participation in the estate
0190 and assets of any such credit union. The receiver of any insolvent
0191 credit union may borrow money and pledge the assets of such
0192 insolvent credit union but only upon prior written approval of
0193 the administrator. At least once each year the administrator shall
0194 examine every credit union in the hands of the receiver and

0195 copies of such examination reports shall be available to
0196 interested shareholder or creditor by written request made to
0197 administrator. Every receiver shall submit the records and aff
0198 of such credit union to an examination by the administrator or
0199 administrator's assistant and examiners whenever the receive
0200 requested to do so. The receiver of any credit union shall m
0201 reports to the administrator in the same manner as required
0202 other credit unions.

0203 (c) *Liquidating procedure.* The credit union shall conti
0204 in existence for the purpose of discharging its debts, collect
0205 and distributing its assets, and doing all acts required in orde
0206 wind up its business and may sue and be sued for the purpos
0207 enforcing such debts and obligations until its affairs are fi
0208 adjusted.

0209 The board of directors, or the receiver shall use the asset
0210 the credit union to pay in the following order: (1) Expen
0211 incidental to liquidation including any surety bond that may
0212 required; (2) remaining liabilities other than shareholdings;
0213 (3) the assets then remaining, if any, shall be distributed to
0214 savings held by each member as of the date dissolution
0215 voted.

0216 As soon as the board or the receiver determines that all as
0217 from which there is a reasonable expectancy of realization h
0218 been liquidated and distributed as set forth in this section, th
0219 shall execute a certificate of dissolution on a form prescribed
0220 the administrator and file same with the register of deeds of
0221 county wherein the credit union had its registered office, v
0222 shall, after recording and indexing same, forward it to the
0223 ministrator, whereupon such credit union shall be dissolv
0224 The administrator shall furnish a copy of the certificate of
0225 solution to the secretary of state.

0226 Sec. 4. K.S.A. 17-2242 is hereby amended to read as follo
0227 17-2242. (a) If it appears to the administrator that the board
0228 directors, supervisory or credit committees, of any credit un
0229 has been dishonest, reckless or incompetent in the performan
0230 of their duties, the administrator, with the concurrence of
0231 credit union council: (1) May recommend the removal of su

0232 persons; and (2) *may* submit any such findings, reports or rec-
 0233 ommendations to any regularly or specially called meeting of the
 0234 board of directors, credit and supervisory committees or, if ~~he the~~
 0235 *administrator* has done this ~~he may~~, (3), after due notice given at
 0236 least ~~ten (10)~~ 10 days in advance, *may* submit ~~his the adminis-~~
 0237 *trator's* findings and recommendations and reports to a general
 0238 meeting of the shareholders. Due notice shall be construed as
 0239 being such notice as is provided in the bylaws of the credit union
 0240 for calling such meetings. ~~He~~ *The administrator* may give such
 0241 additional notice to the members as ~~he the administrator~~ deems
 0242 advisable. The credit union council, the administrator and em-
 0243 ployees shall not be personally liable for such reports, recom-
 0244 mendations and findings made in good faith. At any such meet-
 0245 ing of the shareholders it shall be in order to call for a vote to
 0246 remove such officers, board members, committee members, or
 0247 employees. Such action by the shareholders to remove or not
 0248 remove such persons from their positions shall be absolute and
 0249 need not be based on any finding, concurrence or nonagreement
 0250 with the administrator that such persons are or have been dis-
 0251 honest, reckless or incompetent in the performance of their
 0252 duties. At any such meeting of the shareholders the board of
 0253 directors, supervisory or credit committees may concur or not
 0254 concur with a recommendation of removal whether or not they
 0255 agree with the findings of the administrator.

0256 (b) *As an alternative to and notwithstanding subsection (a),*
 0257 *the administrator may suspend from office and prohibit from*
 0258 *further participation in any manner in the conduct of the affairs*
 0259 *of a credit union any director, officer, committee member or*
 0260 *employee who has committed any violation of a law, rules and*
 0261 *regulations or of a cease and desist order or who has engaged or*
 0262 *participated in any unsafe or unsound practice in connection*
 0263 *with the credit union or who has committed or engaged in any*
 0264 *act, omission or practice which constitutes a breach of that*
 0265 *person's fiduciary duty as such director, officer, committee*
 0266 *member or employee, when the administrator has determined*
 0267 *from clear and convincing evidence that such action or actions*
 0268 *have resulted or will result in substantial financial loss or other*

Banks

S&L's

9-1805. Removal of officer or director; procedure; judicial review. (a) If the board finds in accordance with this section that any officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously fails to observe any legally-made order of the commissioner or board, the board may remove such officer or director.

(b) The board, in a notice signed by the commissioner, shall notify the officer or director by mail that:

(1) The board has been informed that the officer or director has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously failed to comply with any legally-made order of the commissioner or board:

• • • •

(d) Any action of the board pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If on review the court upholds an order of the board removing an officer or director or if review of such an order is not sought within the time allowed by law, the office of the officer or director shall be forfeited and vacated by law and such office shall then be filled in accordance with existing statutes and bylaws by another person or persons.

History: L. 1947, ch. 102, § 107; L. 1975, ch. 44, § 40; L. 1976, ch. 145, § 37; L. 1986, ch. 318, § 18; July 1.

17-5617. Removal of director, officer or employees; commissioner's approval required. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the special deputy commissioner may remove any director, officer or employee provided the order of removal of a director or officer shall be approved in writing by the commissioner.

History: L. 1943, ch. 133, § 170; L. 1965, ch. 150, § 13; L. 1983, ch. 87, § 4; April 14.

17-5642. Association may appeal to board any action of commissioner in appointing conservator or receiver. If an association deems itself aggrieved by the action of the commissioner in taking possession of its property, business and assets, for the purposes of conservatorship or receivership, or any order issued by the commissioner in connection with any conservatorship or receivership, it may appeal from such action to the board. No action taken by a conservator or a receiver while in office shall be invalidated by such appeal having been filed or by any order of the board. The filing of such an appeal shall not remove a conservator from the management of an association or a receiver from possession of the property and assets of an association during the pendency of such appeal.

17-5643. Board may remove conservator or receiver. If the board shall disapprove the action of the commissioner in appointing a conservator or a receiver, it shall issue an order removing the conservator or receiver. Upon the delivery of such order signed by the chairman of the board to the commissioner, the commissioner shall issue an order redelivering the association to the board of directors of the association then in office.

0269 *damage that seriously prejudices the interests of the members.*
 0270 *The credit union may appeal the order pursuant to K.S.A.*
 0271 *17-2241, and amendments thereto.*

0272 (c) *The administrator shall have the power to subpoena*
 0273 *witnesses, compel their attendance, require the production of*
 0274 *evidence, administer oaths and examine any person under oath*
 0275 *in connection with any subject relating to a duty imposed upon*
 0276 *or authority vested in the administrator.*

0277 Sec. 5. K.S.A. 17-2249 is hereby amended to read as follows:
 0278 17-2249. (a) If any credit union shall fail to obtain and maintain
 0279 insurance upon its shares as required under the provisions of
 0280 K.S.A. 17-2246, *and amendments thereto*, the administrator shall
 0281 notify the credit union that a continuation of such failure will
 0282 result in the revocation of its certificate of approval. If after
 0283 receipt of such notice the credit union fails or refuses to obtain
 0284 such insurance, the administrator shall, ~~after a hearing or an~~
 0285 ~~opportunity for a hearing has been given said credit union~~, grant
 0286 an extension of time in the manner authorized by K.S.A. 17-2246,
 0287 *and amendments thereto*, or revoke the certificate of approval
 0288 and shall cause one of ~~said the~~ administrator's agents to take
 0289 possession of the business of such credit union and retain pos-
 0290 session ~~thereof~~ until such time as such insurance is obtained or
 0291 the affairs of the credit union are finally liquidated. *A credit*
 0292 *union may appeal such action pursuant to K.S.A. 17-2241, and*
 0293 *amendments thereto.*

0294 (b) If any credit union shall fail to give notice that it does not
 0295 maintain insurance upon its shares in the manner required under
 0296 the provisions of K.S.A. 17-2247, *and amendments thereto*, the
 0297 ~~credit union~~ administrator shall notify such institution that a
 0298 continuation of such failure will result in the revocation of its
 0299 certificate of approval. If after receipt of such notice the credit
 0300 union fails or refuses to comply, the administrator shall, ~~after a~~
 0301 ~~hearing or an opportunity for a hearing has been given to such~~
 0302 ~~credit union~~, grant an extension of time in the manner authorized
 0303 by K.S.A. 17-2247, *and amendments thereto*, or revoke its certifi-
 0304 cate of approval. ~~Thereupon~~ Proceedings shall be commenced
 0305 for the dissolution of such institution in the manner provided by

0306 law. *A credit union may appeal such action pursuant to K.S.A.*
0307 *17-2241, and amendments thereto.*

0308 Sec. 6. K.S.A. 17-2242 and 17-2249 and K.S.A. 1986 Supp.

0309 17-2206, 17-2226 and 17-2230 are hereby repealed.

0310 Sec. 7. This act shall take effect and be in force from and

0311 after its publication in the Kansas register.

Attachment I
Senate F I & I - 4/1/87

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